

This brochure provides a general description of the Arizona Estate Recovery Program. Individual circumstances may vary and affect how law or policy is applied. Additionally, federal and state laws and regulations are always subject to change. AHCCCS continues to update this brochure as changes occur in the Estate Recovery Program.

For more information regarding Arizona's Estate Recovery Program, please contact:

AHCCCS, Division of Business & Finance, Third Party Liability
Local Calls (602) 417-4030
In-state toll free - 1-800-654-8713 (ext. 74030)
Out-of-state toll free 1-800-523-0231 (ext. 74030)

OR

Health Management Systems, Inc. (HMS)
Phoenix Area (602) 954-8380
Out-of-state toll free - 1-888-378-2836

For more information about your Medicaid eligibility determination and ALTCS, please contact your local ALTCS eligibility office. To obtain the telephone number for the ALTCS eligibility office in your area, please call:

602-417-7000 or the AHCCCS toll free number shown above.

The telephone numbers for the ALTCS offices can be also be obtained from the "Government pages" section of your local telephone directory; look for "Arizona Health Care Cost Containment System" under the "State" listings.

AHCCCS provides information about the ALTCS program at its website: <http://www.ahcccs.state.az.us>.

The Centers for Medicare & Medicaid Services (CMS) provides information about Medicaid at its website: <http://www.cms.hhs.gov>

STATE OF ARIZONA

MEDICAID ASSISTANCE ESTATE RECOVERY PROGRAM



ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)

INTRODUCTION

After almost two months in the hospital during the summer of 2007, Mr. Clark, age 68, entered a Phoenix nursing home. Mr. and Mrs. Clark learned that their health care coverage, Medicare, would not cover all of Mr. Clark's medical expenses. The Clarks found that they could not make the remaining share of the payments toward the steady flow of Mr. Clark's medical bills. The Clarks learned they could apply for Medicaid, a Federal-State health insurance program for qualified individuals. Mrs. Clark contacted the Arizona long-term care (ALTCS) office and scheduled an appointment to apply for long-term care assistance for Mr. Clark. During the Medicaid application process, Mrs. Clark learned of Arizona's "Estate Recovery Program" which affects Medicaid recipients ages 55 or older, who receive long-term care medical assistance on or after January 1, 1994. Although the Clark family is "fictional", the situation describes circumstances that are commonly experienced. The purpose of this brochure is to help people like the Clarks and their family members better understand Arizona's Estate Recovery Program and what impact, if any, this will have to their family.

FREQUENTLY ASKED QUESTIONS ABOUT ARIZONA'S ESTATE RECOVERY PROGRAM

1. Why does Arizona have an Estate Recovery Program?

Congress passed the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) on August 10, 1993. It became effective as Federal law under 42 U.S.C. 1396(p) on October 1, 1993. The passage of this Federal law mandated the State of Arizona to implement an Estate Recovery Program. Arizona implemented its Estate Recovery Program effective January 1, 1994.

2. Who is responsible for Arizona's Estate Recovery Program?

Arizona's Medicaid program is administered by the Arizona Health Care Cost Containment System Administration (AHCCCS), in compliance with Federal and State laws. Arizona's long-term care program is referred to as "ALTCS".

The Notification of the AHCCCS Claim Against the Estate provides the following information:

- AHCCCS' claim amount and list of AHCCCS expenditures to be recovered;
- Authority for the AHCCCS' estate claim;
- Explanation of the enclosed application form and the process for applying for one or more of the three processes which permit waiver or reduction of AHCCCS' estate claim: Estate Claim Statutory Exemption, Undue Hardship Waiver of Estate Claim, and/or Partial Recovery;
- Estate Claim Statutory Exemption Criteria, Undue Hardship Waiver of Estate Claim Criteria, and Partial Recovery (Reduction) Criteria;
- Timeframes for filing a completed application;
- To whom and where to file the application and supporting documentation;
- Whom to contact if there are any questions;
- Where to send payment of the estate claim; and
- The heir's right to file a grievance and request a hearing.

21. What if an heir disagrees with the amount of AHCCCS' claim against the estate or a decision regarding an application filed for an Estate Claim Statutory Exemption, Undue Hardship Waiver, or a Partial Recovery (Reduction) of the estate claim?

AHCCCS provides a grievance and request for hearing process for heir(s) or other interested parties (e.g., personal representative) to present any dispute or disagreement regarding AHCCCS' claim against the estate or a decision made regarding an application filed for a waiver or reduction of the estate claim. HMS's Notification of the AHCCCS Claim Against the Estate and Decision Notice Regarding the AHCCCS Estate Claim provide information regarding an heir's right to file a grievance and request a hearing.

The grievance must be submitted in writing and must be received by the AHCCCS Administration, Office of Administrative Legal Services, Mail Drop 6200, P.O. Box 25520, Phoenix, Arizona 85002, no later than 60 days from the date shown on HMS's Notification of the AHCCCS Claim Against the Estate or Decision Notice regarding the AHCCCS Estate Claim.

After HMS files the *Demand for Notice*, HMS will send the personal representative or authorized representative the following notices:

- a *Notice of Intent to File a Claim Against the Estate*;
- an *Estate Questionnaire*; and
- a copy of the *Demand for Notice* that was filed with the Superior (Probate) Court(s).

The *Estate Questionnaire* assists HMS in identifying if there are circumstances which qualify for an “Estate Claim Statutory Exemption”. AHCCCS will waive recovery of its claim against the estate so long as there is a qualifying Estate Claim Statutory Exemption.

If the estate has already entered probate, HMS will bypass the *Demand for Notice* and *Notice of Intent* process. A claim is immediately placed against the estate.

If HMS does not identify a qualifying Estate Claim Statutory Exemption, and the ALTCS member owned property that is, or appears to be, subject to Small Estate Affidavit or probate, HMS files a Superior Court Claim Against the Estate (referred to as a creditor’s claim) with the Superior (Probate) Court. For estates that will be probated, HMS files the Superior Court Claim Against the Estate to meet the timeframe requirements in A.R.S. §§ 14-3801 and 14-3804.

AHCCCS contracts with Health Management Systems, Inc. (HMS) to conduct Arizona’s Estate Recovery Program.

3. Does Estate Recovery apply to everyone?

The Estate Recovery Program only applies to the estates of individuals who are ages 55 and older and who were enrolled in the Arizona long-term care medical assistance program. AHCCCS provides long-term care medical assistance to individuals in a nursing home or in a residential setting referred to as home and community-based services (HCBS). AHCCCS will defer recovery of its estate claim so long as there is an Estate Claim Statutory Exemption. In addition, Federal law requires states to waive its Estate Claim when an heir to the estate meets all of AHCCCS Undue Hardship Criteria. These processes are discussed on pages 9, 10, and 11.

4. Will AHCCCS file a lien against my property before my death?

AHCCCS may impose a TEFRA lien, as authorized under 42 U.S.C.1396 (p) (Tax Equity and Fiscal Responsibility Act of 1982) against the real property, including the member’s primary residence, of certain permanently institutionalized nursing home members. The purpose of the lien is to recover the cost of AHCCCS benefits provided upon the member’s death or upon the sale or transfer of the property.

5. How does AHCCCS determine the amount of the estate claim that will be filed against the ALTCS member’s estate?

The amount of the AHCCCS estate claim that will be filed against the ALTCS member’s estate will be the total of the ALTCS payments that AHCCCS paid on behalf of the ALTCS member. AHCCCS recovers the following ALTCS payments:

- Capitation Payments;
- Medicare Coinsurance and Deductibles Payments paid by AHCCCS;
- Medicare Part A and Part B Premiums Payments;
- Reinsurance Payments; and
- Fee-For-Service Payments.

Capitation Payments: The AHCCCS program is based on cost containment through preventive care rather than emergency care. AHCCCS contracts with “program contractors” which in turn are responsible to ensure the delivery of all covered medical services to ALTCS members. AHCCCS pays program contractors a monthly “capitation” payment prospectively for each enrolled ALTCS member. This capitation concept is patterned on the way many individuals pay for private health care insurance. AHCCCS pays the monthly capitation payment to the program contractor for each month the ALTCS member is enrolled, regardless of whether the ALTCS member received a medical service during the month.

The average AHCCCS monthly capitation payment to program contractors, for contract year 2007, is approximately \$3,120. However, this capitation amount, may be greater for some ALTCS members based on the type of long-term medical care that is needed. **It is important to be aware that capitation payments can exceed the actual costs of services provided during the month.**

Medicare Coinsurance and Deductible Payments: Medicare provides health insurance to people ages 65 and over, those who have permanent kidney failure, and certain people under age 65 with a disability. Medicare requires cost sharing in the form of deductibles and coinsurance. AHCCCS may be responsible for the payment of the ALTCS member’s coinsurance and deductible payments prior to enrollment with the program contractor. AHCCCS recovers all Medicare coinsurance and deductibles paid on behalf of the ALTCS member prior to enrollment with the Program Contractor.

Medicare Part A and Part B Premium Payments: Medicare also requires cost sharing in the form of premiums. AHCCCS recovers all Medicare Part A and Part B premium payments paid to the Social Security Administration on behalf of the ALTCS member.

18. How does an heir apply for a waiver or reduction of AHCCCS’ estate claim?

If an heir to the estate wishes to apply for a waiver or reduction of AHCCCS’ estate claim, the heir shall submit a written request and provide all supporting documentation to HMS so that it is received by HMS no later than 30 days from the date shown on the Notification of the AHCCCS Claim Against the Estate.

AHCCCS will make a Decision within 60 days of receipt of a completed application and all supporting documentation. HMS will mail a Decision Notice Regarding the AHCCCS Estate Claim to the personal representative and heir informing them of AHCCCS’ decision.

19. When is the Member’s Personal Representative required to notify AHCCCS?

A member’s Personal Representative must notify AHCCCS of the member’s estate or property within three months after the member’s death if the member was at least fifty-five years of age and if AHCCCS has not already filed a Statement of Claim in the estate proceedings (A.R.S. 36-2935.B).

20. How does the estate recovery process work?

When HMS is notified that an ALTCS member is deceased, and the ALTCS member received ALTCS benefits at age 55 or older on or after January 1, 1994, HMS will file a Demand for Notice with the Superior (Probate) Court. The purpose of the Demand for Notice is to require notice to AHCCCS of all orders and filings regarding the ALTCS member’s estate. The Demand for Notice also assists in protection of AHCCCS’ interest in any future estate proceedings.

If the estate contains both real and personal property, and the heir qualifies for an undue hardship, then AHCCCS shall not grant an undue hardship waiver, but adjusts its claim to the value of the personal property.

The notices HMS sends provide additional information about undue hardship and the process for applying, including what verification must be provided.

The undue hardship criteria are also specified in AHCCCS Regulation-Arizona Administrative Code, R9-28-911.

Partial Recovery (Reduction): AHCCCS will reduce the amount of the estate claim when the criteria for a partial recovery are met. AHCCCS considers the following factors in determining if a partial recovery (reduction) of the estate claim should be approved:

- Financial and medical hardship to the heir(s);
- Income of the heir(s) and whether the household income is within 100% of the Federal Poverty Guidelines;
- Resources of the heir(s);
- Value and type of assets in the estate (real and personal);
- Amount of AHCCCS' estate claim;
- Whether other creditors have filed claims against the ALTCS member's estate or have foreclosed on the property; or
- Any other factors relevant for a fair and equitable determination under the circumstances of a particular case.

The Partial Recovery criteria are also specified in AHCCCS regulations at Arizona Administrative Code R9-28-912.

The notices HMS sends provide additional information about partial recovery and the process for applying, including what verification must be provided.

Reinsurance Payments: AHCCCS provides a risk-sharing program to program contractors for the reimbursement of certain contract service costs incurred by an ALTCS member that are beyond a certain monetary threshold. Therefore, in addition to the monthly capitation payment, AHCCCS may make a reinsurance payment to the program contractor.

Fee-For-Service Payments: In certain instances, AHCCCS may be responsible for direct payment of some or all of an ALTCS member's medical bills not covered by Medicare or other available insurance. These payments are called fee-for-service payments.

6. How can I determine if it is financially beneficial for me to enroll in ALTCS?

If you need long-term medical care in your own home, or in a nursing home, and the medical care will not be paid by your Medicare or other health insurance coverage, you may want to apply for ALTCS to help pay for these costs.

Before enrolling in ALTCS, if an applicant or family member is concerned about AHCCCS' claim that will be filed against the estate, the applicant and/or family member should evaluate the financial benefits of enrolling the applicant in ALTCS. Because ALTCS payments made on the member's behalf can exceed the actual costs of services provided, and accrue even if no medical service is provided, it is very important that ALTCS applicants (and family members) make an informed decision about enrolling in ALTCS. **This is especially true for those ALTCS applicants who elect to remain in their own home and do not enter a nursing home.** The applicant and family member should review whether it is better financially and medically for the applicant to pay for his/her needed medical services out-of-pocket (what won't be paid by Medicare and/or other insurance) rather than enrolling in ALTCS and incurring a claim against their estate. Individuals who do not require many medical services may not wish to enroll in ALTCS because their estate will be responsible for payment to AHCCCS of all ALTCS payments that are listed on Page 2.

An ALTCS applicant may voluntarily withdraw his/her ALTCS application. An ALTCS enrolled member may elect to stop ALTCS enrollment at any time, to stop accruing additional AHCCCS capitation and other costs that will be included in AHCCCS' claim against the estate.

7. *When does AHCCCS' claim against the ALTCS member's estate begin to accrue?*

The effective date the AHCCCS claim against the estate begins to accrue depends on the age of the ALTCS member when the ALTCS coverage begins. Usually, the AHCCCS estate claim begins to accrue on the first day of the month in which the ALTCS coverage begins. However, if an ALTCS member is younger than age 55 on that date, then AHCCCS' estate claim begins to accrue on the date the ALTCS member becomes age 55. **Example:** If an ALTCS member is age 55 or older at the time of his/her ALTCS coverage effective date of January 1, 2007, the AHCCCS' claim begins to accrue on January 1, 2007. However, if the ALTCS member is age 54 on January 1, 2007, and turns age 55 on August 15, 2007; the AHCCCS estate claim begins to accrue on August 15, 2007.

8. *What assets owned by the ALTCS member are subject to AHCCCS' estate claim?*

AHCCCS' estate claim is filed only against the property owned by the ALTCS member at the time of his/her death that is subject to Small Estate Affidavit or probate. This means that AHCCCS' claim is filed only against the "estate" of the individual. A home that is solely owned by the ALTCS member, is owned jointly without right of survivorship, or is owned jointly with right of survivorship but the joint owner is deceased, is subject to Small Estate Affidavit or probate, and is therefore subject to payment of AHCCCS' claim against the estate. If the ALTCS member owns an annuity, and the annuity is subject to Small Estate Affidavit or probate, it is also subject to payment of AHCCCS' claim against the estate.

Undue Hardship Waiver: AHCCCS will waive the claim against the ALTCS member's estate when the heir to the estate meets all of AHCCCS' undue hardship criteria in either a. or b. below:

a. The estate contains real property assets only or both real and personal property assets, and

- (1) The real property in the estate is listed as residential property by the Arizona Department of Revenue or County Assessor's Office; and
- (2) The heir to the estate meets all of the criteria listed in either (a) through (d) or (e) through (h) below:
 - (a) Owns a business that is located at the residential property;
 - (b) The business has been in operation at the residential property for at least 12 months preceding the ALTCS member's death;
 - (c) The business provides more than 50% of the heir's livelihood; and
 - (d) The recovery of the property would result in the heir to the estate losing their means of livelihood.

OR

- (e) Currently resides in the residence;
- (f) Resided there at the time of the ALTCS member's death;
- (g) Has made the residence his or her primary residence for the 12 months immediately preceding the ALTCS member's death; and
- (h) Owns no other residence.

b. The estate contains personal property assets only, and the heir to the estate meets all of the criteria listed in both (1) and (2):

- (1) The heir's annual gross income for their household size is less than the federal income poverty guidelines. New sources of income (for example, employment, Social Security, etc.) will be included in determining the household's annual gross income; and
- (2) The heir does not own a home, land, or other real property.

17. Does AHCCCS ever waive or reduce its claim against the ALTCS member's estate?

Yes, in certain circumstances. AHCCCS shall waive its estate claim when an "Estate Claim Statutory Exemption" exists, or when an "Undue Hardship Waiver of Estate Claim" exists. Also, AHCCCS will reduce the amount of the estate claim when the heir(s) to the estate meets the criteria for a "Partial Recovery (Reduction)" of the estate claim.

In addition to the above waivers, Federal law limits recovery from the property owned by Native Americans (members of federally recognized Indian tribes).

Estate Claim Statutory Exemption: AHCCCS will defer recovery of its estate claim against the ALTCS member's estate so long as there is an Estate Claim Statutory Exemption. An Estate Claim Statutory Exemption exists when there is a:

- Surviving spouse;
- Surviving child who is under age 21; or
- Surviving child of any age who is blind or disabled and meets SSA or SSI disability criteria.

To claim an Estate Claim Statutory Exemption, proof of the exemption must be provided. Examples of proof are:

- A marriage license to verify there is a surviving spouse.
- A certificate or other legal document that verifies the child's relationship to the ALTCS member to verify there is a surviving child under age 21.
- An SSA/SSI disability benefit award letter from the Social Security Administration that verifies the child receives SSA or SSI disability benefits to verify the surviving child is blind or disabled.

For additional information regarding what real and personal property assets are subject to Small Estate Affidavit or probate, and the processes under each for administering the estate, contact the Arizona Probate Registrar for the Superior (Probate) court in your county.

9. What is a TEFRA lien?

AHCCCS may impose a TEFRA lien against the member's real property, including the member's home, after the member becomes permanently institutionalized at a nursing home, mental health hospital, or other long-term care medical facility. Permanently institutionalized means the member has resided in a long-term care medical facility for at least 90 consecutive days, and the member's condition is not likely to improve to the point that the member will be discharged from the long-term care medical facility and return home by a date certain.

The purpose of the lien is to recover the cost of benefits provided upon the member's death or upon the sale or transfer of an interest in the property. The lien is not enforced until one of these events occurs.

10. Who do TEFRA liens apply to?

ALTCS members who are ages 55 and older and who are permanently institutionalized will have a lien imposed against their personal home or other real property unless certain conditions exist. A lien will not be enforced so long as a spouse, child under 21, or a blind or permanently and totally disabled child survives the member. Also, a lien will not be enforced against a home so long as the following persons currently reside there:

- A sibling who was living there for at least a year before the member was admitted to the facility, or
- A child who was living there for at least two years before the member was admitted to a facility and provided care which allowed the member to stay out of an institution. Documentation proving the care was provided must be submitted to the state's satisfaction.

11. How does the TEFRA lien process work?

Following notification that a member has been placed into a medical institution for 90 days or more and cannot reasonably be expected to be discharged and return to their home, AHCCCS will send a Notice of Intent to File a Lien against Real Property to the member or their authorized representative. If there is no response, or if AHCCCS determines that the proper criteria have not been met, a TEFRA Lien will be filed against the member's real property. Should a member wish to contest the lien, he or she may file a request for a fair hearing within thirty days of receiving the Notice of Intent.

12. What happens after the lien has been filed?

No further action is taken by AHCCCS after the lien has been filed until either:

- The member returns home with the intention of remaining in the home;
- The property is sold or ownership is transferred; or
- The member dies.

13. What if I return home?

If a member is discharged from a medical facility and returns to his or her own home on a permanent basis, the lien will be removed. However, if the member is readmitted into the medical facility permanently, a new lien may be filed against the member's real property.

14. What happens if I want to transfer or sell the property?

If you sell the property, you will need to repay AHCCCS for the medical payments AHCCCS has made on your behalf. The amount you need to repay will be equal to the amount that AHCCCS has paid.

15. What happens when I die and a TEFRA lien was filed?

The TEFRA lien will remain in place and claim will be made against your estate. The TEFRA lien may be released (removed) if there is an Estate Claim Statutory Exemption; or, if AHCCCS grants an Undue Hardship Waiver; or, if the Estate Claim is paid in full; or, if AHCCCS approves a request for a Partial Recovery (Reduction). These processes are discussed in FAQ numbers 17-18 below.

16. How does AHCCCS' claim against the estate affect estates which will be filed by a Small Estate Affidavit and those filed through probate?

The AHCCCS claim against the ALTCS member's estate has the same impact against the estate regardless of whether the estate will be filed by Small Estate Affidavit or filed through probate. Under Arizona Probate Law, A.R.S. § 14-3805, AHCCCS' claim against the estate is classified as a debt due the State. AHCCCS' claim against the estate must be paid from available estate assets in accordance with A.R.S. §§ 14-3971 and 14-3807. AHCCCS does not take direct possession of the estate assets. Rather the payment of AHCCCS' estate claim is made from the AHCCCS member's estate.

The Small Estate Affidavit and probate are the "processes" for liquidating the estate of a decedent and making distribution to the heir(s). The Small Estate Affidavit allows for some estates to be filed by an "affidavit" rather than probate, which reduces the administrative costs that are experienced when an estate must be probated.